



March 15, 1991

Itel Rail Corporation

550 California Street
San Francisco, CA 94104
(415) 984-4200

Hon. Sidney L. Strickland, Jr., Esq.
Secretary
Interstate Commerce Commission
Washington, DC 20423

Re: Amendment No. 11
Amendment No. 12

1-078A057
10129 S+T
RECORDED BY _____ FILED IN _____

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INTERSTATE COMMERCE COMMISSION

Dear Mr. Strickland:

On behalf of Itel Rail Corporation, the above instruments, in three (3) counterparts each, are hereby submitted for filing and recording pursuant to 49 U.S.C. Section 11303(a), along with the \$30 recordation fee.

Please record both Amendments under the Lease Agreement dated as of July 26, 1978, between Itel Rail Corporation and Minnesota, Dakota and Western Railroad Company, which was filed with the ICC on February 22, 1979, under Recordation No. 10129.

The parties to the enclosed document are listed below:

Itel Rail Corporation (Lessor)
550 California Street
San Francisco, California 94104

Minnesota, Dakota and Western Railroad Company (Lessee)
International Falls, Minnesota 56649

Amendment No. 11 reinstates ninety-seven (97) BN boxcars subject to an expired sublease under reporting marks MDW 4000-4096. Amendment No. 12 adds to the Lease Agreement fifty-one (51) 50'6", 100-ton, Plate F boxcars bearing reporting marks MDW 2100-2150.

Please return to the undersigned the stamped counterparts not required for filing purposes, together with the ICC fee receipt and acknowledgment letter.

Very truly yours,

Patricia Schumacker

Patricia Schumacker
Legal Assistant

10129-6
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INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 12 TO LEASE AGREEMENT

THIS AMENDMENT NO. 12 ("Amendment") to that certain Lease Agreement, as amended (the "Agreement"), made as of July 26, 1978 between ITEL RAIL CORPORATION, as successor in interest to Itel Corporation, Rail Division, as lessor ("Lessor"), and MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY as lessee ("Lessee"), is made as of this 8th day of March 1991 between Lessor and Lessee.

RECITALS:

- A. Lessor and Lessee are parties to the Agreement pursuant to which Lessor has leased to Lessee a number of boxcars as described on the Equipment Schedules attached to the Agreement (the "Boxcars").
- B. Lessor and Lessee desire to add to the Agreement 51 boxcars bearing the reporting marks and numbers MDW 2100-2150 and described on Schedule K hereto.

NOW, THEREFORE, the parties hereto agree to amend the Agreement as follows:

- 1. All terms defined in the Agreement shall have their defined meanings when used in this Amendment.
- 2. The attached Schedule K shall be added to and made part of the Agreement.
- 3. The effective date of this Amendment with respect to each Boxcar described on Schedule K shall be the date on which such Boxcar is remarked to MDW reporting marks.
- 4. With respect to the Boxcars described on Schedule K only, Section 2 of the Agreement shall be amended as follows:
 - A. Subsection 2.A. of the Agreement shall be replaced with the following:

"The term of the Agreement with respect to each Boxcar described on Schedule K ('Term') shall commence at 12 noon on the date such Boxcar is remarked ('Delivery') and shall expire as to all such Boxcars 5 years from the earlier of (a) the date the last such Boxcar was remarked or (b) 120 days from the date on which the first of the Boxcars described on Schedule K is physically interchanged onto Lessee's lines. Upon the Delivery of the final Boxcar, Lessor shall provide Lessee with a Certificate of Delivery that shall contain the date each Boxcar was remarked and the expiration date of the Term with respect to all Boxcars on Schedule K. Each date on such Certificate shall be deemed accurate, final and binding unless Lessee disputes such date in writing within 14 calendar days of receipt by Lessee of such Certificate."

100 copy

- B. Subsection 2.B. shall be deleted in its entirety.
5. With respect to the Boxcars described on Schedule K only, Subsection 3.A. of the Agreement is replaced by the following:

"3. Supply Provisions

- A. Lessee hereby approves the specifications of the Boxcars delivered to it by Lessor. Lessor shall, at its expense, remark the Boxcars with the railroad markings of Lessee in compliance with all applicable regulations. Each Boxcar shall be deemed delivered and subject to the terms and provisions of this Agreement at 12 noon on the date and at the location such Boxcar is remarked. After each Boxcar has been remarked, it shall be moved to Lessee's railroad lines at no cost to Lessee as soon as is consistent with mutual convenience and economy. Notwithstanding that Lessee may not have immediate physical possession of the Boxcars leased hereunder, Lessee agrees to pay the rent set forth in this Agreement. To move the Boxcars to Lessee's railroad line and to ensure optimal use of the Boxcars after the Initial Loading (as hereinafter defined), Lessor agrees to assist Lessee in monitoring Boxcar movements and, when deemed necessary by Lessee, to assist in the issuance of movement orders with respect to such Boxcars to other railroad lines in accordance with Interstate Commerce Commission ('ICC') and Association of American Railroads ('AAR') interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ('Interchange Rules'). If Lessor incurs expenses in having other railroads move Boxcars in accordance with this Section with Lessee's request and approval, except for any expenses incurred in the initial delivery of such Boxcars pursuant to this Section, Lessee shall reimburse Lessor for such expenses within 10 days of receipt of an invoice from Lessor. For the purposes hereof, the term 'Initial Loading' as to each Boxcar, shall mean 'the earlier to occur of (i) the date each Boxcar was first loaded with freight on Lessee's railroad line, or (ii) 30 days from the date each Boxcar was first delivered to Lessee's railroad line'."
6. Subsection 3.C. as amended by Amendment No. 7 shall apply to the Boxcars described on Schedule K.
7. With respect to the Boxcars described on Schedule K only, Section 7 of the Agreement shall be amended as follows:
- A. Subsections 7.A.(i) and 7.A.(ii) shall be replaced with the following:
- "A. (i) Subject to adjustments for Lessee providing insurance for the Boxcars, Lessor shall receive on Lessee's behalf

all payments including but not limited to (a) mileage charges and (b) hourly charges ('Per Diem') made to Lessee by other railroad companies for their use or handling of the Boxcars listed on Schedule K. Lessor shall be entitled to and shall retain all mileage charges earned on the Boxcars. If the Per Diem Utilization of all such Boxcars delivered to Lessee on an aggregate basis for each calendar quarter shall be equal to or less than , then Lessor shall retain

of such Per Diem. For the purpose of this Agreement, Utilization of the Boxcars shall be determined by a fraction, the numerator of which is the aggregate number of days in each calendar quarter that Per Diem car hire payments are earned by Lessee on the Boxcars described in Schedule K, commencing from the Initial Loading, and the denominator of which is the aggregate number of days in each quarter that such Boxcars are on lease to Lessee, commencing from the Initial Loading.

- (ii) In the event Utilization exceeds in any calendar quarter for the Boxcars described on Schedule K, Itel shall receive an amount equal to the Itel Base Rental plus an amount equal to of the Per Diem earned in excess of the Itel Base Rental. For purposes hereof Itel Base Rental shall be an amount equal to the total Per Diem earned for the Boxcars described on Schedule K for each calendar quarter multiplied by a fraction, the numerator of which is and the denominator of which is the Utilization of such Boxcars for such calendar Quarter. (The above determination of Itel Base Rental insures that Lessee will, if Utilization is greater than in any calendar quarter, receive of all Per Diem earned for such Boxcars from other railroads for use or handling of such Boxcars in excess of the Itel Base Rental.)"

- 8. With respect to the Boxcars described on Schedule K, Section 10 of Amendment No. 7 shall apply except that (a) "January 1986" shall be replaced by "January 1991", and (b) "If the Payments earned during any calendar quarter are less than or equal to an average of " shall be replaced by "If the Per Diem earned during any calendar quarter is less than or equal to the Itel Base Rental".
- 9. Nothing herein contained shall be deemed (a) to constitute a waiver or otherwise modify, affect or impair any sums due to Lessor or Lessee with respect to any Boxcar, including the Boxcars described on Schedule K, under the terms and conditions of the Agreement, or (b) to constitute a waiver or otherwise modify, affect or impair the power, rights or remedies vested in or available to Lessor or Lessee with respect to any Boxcar under the terms and conditions of the Agreement.

10. Except as expressly modified by this or any other Amendment, all terms and provisions of the Agreement shall remain in full force and effect with respect to all cars subject to the Agreement.
11. This Amendment may be executed by the parties hereto in any number of counterparts, and all counterparts taken together shall be deemed to constitute one instrument.

Each party, pursuant to due corporate authority, has caused this Agreement to be executed by its authorized officer, and each of the undersigned declares pursuant to 28 U.S.C. Section 1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

ITEL RAIL CORPORATION

MINNESOTA, DAKOTA & WESTERN
RAILWAY COMPANY

By: *Mike Smith*
Title: VP SALES
Date: 3/8/91

By: *R. A. Walen*
Title: Vice President
Date: 2/28/91

SCHEDULE K

ITEL RAIL CORPORATION hereby leases the following Cars to MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY pursuant to that certain Lease Agreement dated as of July 26, 1978, as amended.

AAR Mech. Desig.	Description	Reporting Marks and Numbers	Length	Inside Width	Height	Doors Width	No. of Cars
XM	100-Ton, Plate F Boxcars	MDW 2100- 2150	50' 6"	9' 6"	12' 10"	2-8' Sliding	51

Each party, pursuant to due corporate authority, has caused this Schedule K of the Agreement to be executed by its authorized officer, and each of the undersigned declares pursuant to 28 U.S.C. Section 1746 under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

ITEL RAIL CORPORATION

By: *Mike Smith*
 Title: *VP SALES*
 Date: *3/8/91*

MINNESOTA, DAKOTA & WESTERN
RAILWAY COMPANY

By: *Bill Walen*
 Title: *Vice President*
 Date: *2/28/90*